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U.S. BANKRUPTCY COURT
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BY: 
CLERK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re:	Case No.: 23-13359 (VFP)
BED, BATH, & BEYOND, INC., et al.,	Chapter 11
Debtors,	SANTA CRUZ COUNTY TREASURER- TAX COLLECTOR'S RESPONSE TO DEBTOR'S MOTION TO DETERMINE TAX LIABILITY AND STAY PROCEEDINGS AS TO CERTAIN CALIFORNIA TAXING AUTHORITIES
	Date: October 24, 2023 Time: 10:00 a.m. (ET) Judge: Honorable Vincent F. Papalia Courtroom: 3B

Creditor, County of Santa Cruz Treasurer-Tax Collector ("SCTTC"), hereby responds to Debtor's Motion to Determine Tax Liability and Stay Proceedings as to Certain California Taxing Authorities (the "Motion") (Doc. 2181).

I. INTRODUCTION

Debtors seek to re-assess the 2023 fair market value bases upon which to compute their Santa Cruz County, California business property taxes for tax year 2023 for the Debtor's business property located in Santa Cruz County, California, pursuant to Section 505(a) of the Bankruptcy Code. Debtor's proposed approach to its revised 2023 fair market values is not an accepted valuation methodology under California law.

1 Creditor, SCCTTC respectfully requests that the court abstain from re-determining Debtors'
2 tax liability. Property tax assessment in California is complex, and the Bankruptcy Court would be
3 required to apply substantive California law on issues that are intended to be decided by a local
4 Assessment Appeals Board ("AAB") under the California Constitution, jeopardizing the uniformity
5 of assessment. Further, if the Court undertakes Debtor's Motion, there will be a substantial burden
6 imposed on the Santa Cruz County Assessor, as all its appraiser staff and their legal advisor, Office
7 of the County Counsel, are located exclusively, in California.

8 Therefore, SCCTTC respectfully requests the Court deny this Motion. Alternatively,
9 SCCTTC objects to the Debtors introduction of any evidence at the hearing on the Motion,
10 including, without limitation, Debtors' self-serving "appraisal," and other evidence which could
11 not have been considered pursuant to applicable nonbankruptcy law.

12 **II. FACTS**

13 As of January 1, 2023, Debtor operated one location in the County of Santa Cruz
14 (Declaration of Sheri Thomas in Support of Response to Debtor's Motion ("Thomas Decl."), ¶ 6.)

15 On April 23, 2023 (the "Petition Date"), the debtors filed a voluntary petition for relief under
16 Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

17 Th Assessor is required to annually assess taxable business personal property as of the lien
18 date (January 1). Business Personal Property includes all "Equipment out on lease, rent, or
19 conditional sale to others" used in the operation of a business. Business Personal Property is
20 reported to the Assessor annually on a form known as the Business Property Statement (Form 571-
21 L) (Thomas Decl., ¶ 3.)

22 Form 571-L constitutes an official request from the Assessor for the taxpayer to declare all
23 assessable business property situated in the county which the taxpayer owned, claimed, possessed,
24 controlled, or managed on the tax lien date, and that the taxpayer signs (under penalty of perjury).
25 Failure to file the statement during the time provided in section 441 of the Revenue and Taxation
26 Code will compel the Assessor to estimate the value of your property from other information in the
27 Assessor's possession and add a penalty of 10 percent of the assessed value as required by section
28 463 of the Revenue and Taxation Code. (Thomas Decl., ¶ 4.)

1 On or about May 4, 2023, Debtors filed their 2023 571-L business property tax statement
2 with the Assessor, with the statements signed true, correct, and complete by their VP of Tax.
3 (Thomas Decl., ¶ 7.) The Assessor assessed the property exactly as it was reported by Debtors. (*Id.*)

4 SCCTTC is responsible for the collection of ad valorem taxes assessed against real property
5 and personal property located in the County of Santa Cruz. *See* Cal. Rev. & Tax. Code § 2903.
6 SCCTTC issued one tax bill for fiscal year 2023 for the personal property and fixtures located
7 within Debtors' Santa Cruz County location. Debtors incurred the tax liabilities claimed due
8 pursuant to California Revenue & Taxation Code §§ 2191.3, 2191.4 and 2193. (Thomas Decl., ¶
9 9).

10 SCCTTC 's deadline to file a claim has not passed. Simultaneous with this Response,
11 SCCTTC is filing an unsecured tax claim.

12 **III. CALIFORNIA PROPERTY TAX PROCEDURE**

13 The basis for assessment of all real and personal property in California is the California
14 Constitution. Specifically, all property tax assessments are established by the provisions of either
15 article XIII or article XIII A (the constitutional article adopted following the passage of Proposition
16 13). The California Constitution requires uniformity of taxation of all property in California (Cal.
17 Const., art. XIII, § 1) and requires that all property be assessed in the county, city, and district in
18 which it is situated. Cal. Const., art. XIII, § 14.

19 There are several steps for property taxation in California all of which are governed by
20 numerous standards, procedures, and protections to ensure fair and uniform application of local
21 property tax assessments. Most of the Legislature's enactments with respect to ad valorem
22 assessment are found in the California Revenue and Taxation Code (hereinafter "R&T Code"). In
23 addition, the State Board of Equalization ("BOE") is mandated to prescribe rules and regulations
24 to govern local boards of equalization when equalizing and county assessors when assessing in
25 compliance with the rulemaking procedures adopted by the California Office of Administrative
26 Law. The BOE has adopted various Property Tax Rules which are contained in Title 18 of the
27 California Code of Regulations. These rules can be found at
28 <https://www.boe.ca.gov/proptaxes/ahcont.htm> (last visited October 12, 2023) (hereinafter and cited

1 to as “Property Tax Rules”).¹

2 Local Assessors also rely on the Assessors’ Handbook, which “is a series of manuals
3 developed by the staff of the [BOE] in an open process”. The objective of the Assessors’ Handbook
4 is to give county assessors, their staff, and other interested parties an understanding of the principles
5 of property assessment and real and personal property appraisal for property tax purposes. The
6 Assessors’ Handbook presents the BOE staff’s interpretation of rules, laws, and court decisions on
7 property assessment.” (See <https://www.boe.ca.gov/proptaxes/ahcont.htm>, last visited October 12,
8 2023).

9 **A. Assessment of Personal Property**

10 The standard of valuation prescribed by the Legislature is that “[all] taxable property shall
11 be assessed at its full cash value.” Cal. Rev. & Tax. Code, § 401. “Full cash value,” as defined in
12 section 110 of the R&T Code, “means the amount at which property would be taken in payment of
13 a just debt from a solvent debtor.” Cal. Rev. & Tax. Code, § 110. “Notably, the net earnings to be
14 capitalized are not those of the present owner of the property, but those that would be anticipated
15 by a prospective purchaser.” *De Luz Homes, Inc. v. County of San Diego*, 45 Cal. 2d 546, 562 (Cal.
16 1955). Thus, the definition of fair market value does not include the sales transactions by a debtor
17 in bankruptcy.

18 Significantly, regarding personal property taxes, the assessment is made based upon
19 information supplied by the taxpayer. (Thomas Decl., ¶¶ 4-7).

20 **B. Review of Property Tax Assessment by the Assessment Appeals Board**

21 A property owner dissatisfied with the annual assessment must file an application for
22 reduction with the AAB, which has authority to “equalize the values of all property on the local
23 assessment roll by adjusting individual assessments.” Cal. Const., art. XIII, § 16; Cal. Rev. & Tax.
24 Code § 1603(a).

25 The functioning of the AAB is governed by sections 1601 through 1645.5 of the R&T Code
26 and sections 301 through 326 of the Property Tax Rules. Section 1604(c) of the R&T Code requires
27

28 ¹ Section 15606(c) of the California Government Code authorizes the State Board of Equalization to “prescribe rules and regulations to govern local board of equalizing when equalizing...”

1 the AAB to hear evidence and make final determination on an application for reduction of
2 assessment of property within two (2) years of timely filing of the application. Cal. Rev. & Tax.
3 Code §1604(c).

4 In appeals involving personal property and fixtures, it may be necessary for the assessor to
5 perform an audit of the taxpayer's records to reach a final value conclusion. The Assessor would
6 also be required to appear at the hearing to defend its valuation, only after the taxpayer met its
7 burden, and would do so based on accepted valuation methodologies prescribed within the R&T
8 Code. (Thomas Decl., ¶ 14).

9 Subject to exceptions set by law, it is presumed that the assessor has properly performed
10 official duties. Cal. Evid. Code § 664; 18 C.C.R. §321, subd. (a); *Texaco Producing v. County of*
11 *Kern*, 66 Cal. App. 4th 1029 (Cal. 1998). The effect of this presumption is to impose upon the
12 applicant the burden of proving that the value on the assessment roll is not correct, or where
13 applicable, the property in question has not been otherwise correctly assessed. Cal. Evid. Code §
14 660; *Texaco Producing, supra*, at p. 1046. The law requires that the applicant present independent
15 evidence relevant to the full value of the property or other issue presented by the applicant. 18
16 C.C.R. § 321, subd. (a).

17 **IV. ARGUMENT**

18 **A. Abstention is Proper**

19 Pursuant to 28 U.S.C. § 1334(c)(1), a bankruptcy court has “broad discretion to abstain from
20 hearing state law claims whenever appropriate ‘in the interest of justice, or in the interest of comity
21 with State courts or respect for State law.’” *Sarfani, Inc. v. Miss. Dept. of Revenue (In re Sarfani,*
22 *Inc.)*, 527 B.R. 241, 252 (Bankr. N.D. Miss. 2015). Section 505(a)(1) provides an additional basis
23 for permissive abstention, because it provides that a court may, but is not required to, determine a
24 debtor's tax liabilities. *Id.*

25 Bankruptcy courts consider the following factors when deciding whether to exercise
26 authority under section 505, including, importantly for purposes of this response: (1) “the
27 complexity of the tax issue”; (2) “the burden on the bankruptcy court's docket”; and (3) “the
28 potential prejudice to the debtor, the taxing authority, and creditors.” *In re New Haven Projects*

1 *LLC, supra*, 225 F.3d at 289 (finding that unsecured creditors would not meaningfully benefit from
2 section 505 review and such review would frustrate the purpose of the statute).

3 Section 505 was not intended to become a super-assessment tribunal over state taxing
4 agencies. *Metromedia Fiber Network, Inc. v. Various State & Local Taxing Auth. (In re Metromedia*
5 *Fiber Network, Inc.)* 299 B.R. 251, 282 (Bankr. S.D.N.Y. 2003), (quoting *Arkansas Corp. Comm'n*
6 *v. Thompson*, 313 U.S. 132, 145, (1941)).

7 1. *California Property Tax Law is Complex and Equalization Should be in the Hands*
8 *of the Local Assessment Appeals Board.*

9 California property tax law is extremely complex. Debtors' Motion ignores this and ask the
10 court to take an approach to valuation that is not consistent with California law. See *CM Reed*
11 *Almeda 1-3062, LLC v. Harris Cnty. (In re CM Reed Almeda 1-3062, LLC)*, 2017 Bankr. LEXIS
12 1155, *24-25 (BAP 9th Cir. 2017) (observing that the court would have to analyze Texas law
13 governing the assessment of property taxes and disputes regarding those assessments under the
14 Debtor's section 505 motion.)

15 There are three major appraisal approaches for estimating value (cost, comparative sales, and
16 income). The nature of the property, its market, and the availability of data will normally indicate
17 which approach(es) is most applicable. This is supported by Property Tax Rule 3, which states, in
18 part: "[i]n estimating value as defined in section 2, the assessor shall consider one or more of the
19 following [approaches to value], as may be appropriate for the property being appraised[.]" 18
20 C.C.R. § 3. Moreover, Property Tax Rule 324 requires that the taxpayer appealing an assessment
21 value "shall be bound by the same principles of valuation that are legally applicable to the assessor."
22 18 C.C.R. § 324. Although Debtors discuss fair market value in their motion, Debtors make no
23 reference to any other principles governing valuation in California. (See generally, Lambert Decl.)
24 There is simply no basis for the court to analyze the debtors' tax liability differently simply because
25 Debtors filed bankruptcy. See *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000).

26 There is an efficient review process available to Debtors within each of the local taxing
27 authorities jurisdiction, and "it seems most appropriate that the debtor in chapter 11 proceed with
28 the systems already in place" for determining its state tax liability, "rather than substituting this

1 court for that process.” *In re the Village at Oakwell Farms, Ltd.*, 428 B.R. 372, 375 (Bankr. W.D.
2 Tex. 2010). “Why the court should need to ‘start from scratch’...when there is a more efficient
3 tribunal that can determine the valuation issues under applicable state law?” *In re CM Reed Almeda*
4 *I-3062, LLC*, 2017 Bankr. LEXIS at *24-25; see also *In re Allegity, Inc.*, 544 B.R. 772, 778 (Bankr.
5 D. Del. 2016) (Delaware bankruptcy court abstained from determining debtor’s Oklahoma tax
6 liability, because debtor was already pursuing relief before Oklahoma Tax Commission).

7 2. *Uniformity of Assessment is at Stake*

8 A significant factor in determining whether a bankruptcy court will exercise discretion under
9 section 5050 is uniformity of assessment. *New Haven Projects LLC v. City of New Haven (In re*
10 *New Haven Projects LLC)* 225 F.3d 283, 288 (2d Cir. 2000); see also *Central Valley Ag Enterprises,*
11 *531 F.3d 750, 764 (9th Cir. 2008)* (recognizing that uniformity of assessment is a basis for
12 abstention); *In re Cable & Wireless USA, Inc.*, 331 B.R. 568, 577-78 (Bankr. D. Del. 2005) (“Each
13 tax authority must enjoy and apply a uniformity of assessment within its tax jurisdiction.”); *In re*
14 *ANC Rental Corp.*, 316 B.R. 163,159 (Bankr. D. Del. 2004) (abstention is often used where
15 uniformity of assessment is an issue); *In re Metromedia Fiber, Inc.*, 299 B.R. 251, 281 (Bankr.
16 S.D.N.Y. 2003).

17 Uniformity of Assessment is of the utmost importance to the Assessor and required under
18 the California Constitution. This uniformity will be placed at risk should an out of state court, rather
19 than our local Assessment Appeals Board, make a valuation determination at a hearing without the
20 Assessor present, and based on valuation methods that are not accepted under the R&T Code.
21 (Thomas Decl., ¶ 18).

22 California counties “would be significantly prejudiced by having the taxes at issue
23 determined by a [New Jersey Bankruptcy] court.” *In re ANC Rental Corp.*, 316 B.R. at 159 (finding
24 that a Texas taxing authority would “be significantly prejudiced by having the taxes at issue
25 determined by a Delaware court.”)

26 The Santa Cruz County Assessor would be significantly prejudiced if it were required to
27 attend and present evidence at a hearing on the appeal of an assessment. They should not be required
28 to travel out of state, unrepresented by County Counsel, to present evidence in a New Jersey

1 bankruptcy proceeding. A valuation hearing in New Jersey would be very burdensome on the
2 Assessor. Assessor staff is located exclusively in the County of Santa Cruz within the State of
3 California. Assessor staff only appear in administrative proceedings before the Assessment Appeals
4 Board, which are not formal court proceedings. (Thomas Decl., ¶¶ 16-17). The County's legal
5 advisor is the County Counsel. The attorneys of the Office of the County Counsel are not barred in
6 New Jersey and thus, unable to represent the Assessor at a valuation hearing in a New Jersey court.
7 (Id.)

8 *3. Debtor's 505 Motion Unnecessarily Burdens the Court*

9 Debtors do not present any evidence to demonstrate that the court's consideration of their
10 Section 505 Motion would result in a more efficient administration of this estate. In fact, Debtors
11 ignore the tremendous burden a 505 determination would place on the court's docket. Debtors are
12 not just contesting the tax liability in a single County; Debtors are contesting tax liability in 26
13 separate and distinct counties. (See Doc. No. 2180 [contesting liability in nine different counties]
14 and Doc. No. 2181 [contesting liability in 17 different counties]).

15 California property tax law does not permit the bulk valuation of property across counties.
16 Instead, the California Constitution requires that all property be assessed in the county, city, and
17 district in which it is situated. Cal. Const., art. XIII, § 14. Therefore, each counties' assessment
18 should be determined at a separate and distinct evidentiary hearing. It is unclear how 26 separate
19 hearings in a New Jersey Bankruptcy Court on California property tax issues promotes the purpose
20 of section 505. Given this court's other commitments, there is no reason to believe that it could hear
21 and determine the issues Debtors have raised more efficiently than the local AABs, which are
22 designed exclusively for this purpose. Moreover, because the R&T Code requires that the hearing
23 take place within two years, there is not a risk of delay.

24 Debtors have not set forth any argument or evidence as to how this court's Section 505(a)(1)
25 determination would benefit other creditors or result in the efficient administration of this case.
26 Instead, it appears that Debtors are attempting to circumvent state property tax law and avoid paying
27 priority tax claims, thereby benefiting only the Debtors (and not the creditors).

28 **B. Debtors Valuation Does Not Comply with Property Tax Rules**

1 Debtor has not met their burden for the court to determine valuation under section 505. The
2 property owner has the burden of proving that the assessor has improperly valued the property, and
3 Debtors are bound by same methods of valuation as Assessor. Debtors cannot meet this burden
4 because their appraisal completely ignores the approaches to value accepted under California law.
5 (See generally, Lambert Decl.)

6 Instead, Debtors seeks to ignore state law by lumping all the assessments of their property
7 across jurisdictions together and asking this court to use its nationwide sales data during Debtors'
8 insolvency. (See Lambert Decl. ¶¶ 6-13; Thomas Decl., ¶¶ 3,15).

9 Contrary to Debtors' argument, "full cash value," as defined in section 110 of the R&T
10 Code, "means the amount at which property would be taken in payment of a just debt from a solvent
11 debtor." Cal. Rev. & Tax. Code §110 (emphasis added). Per the Assessor's Handbook 504 p. 130,
12 sales of assets from a bankruptcy estate should not necessarily be considered valid indicators of
13 market value under the definition of Revenue and Taxation Code section 110. (See Assessors'
14 Handbook 504, p. 50, 130 [recognizing that the buyer of property from a bankrupt's estate could
15 take advantage of the exigencies of the seller.]).

16 **V. CONCLUSION**

17 For the reasons stated herein, the court should abstain from determining Debtor's tax
18 liability pursuant to the Motion to Determine Tax Liability under 11 U.S.C. § 505.

19 Dated: October 14, 2023

CREDITOR COUNTY OF SANTA CRUZ
TREASURER-TAX COLLECTOR

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21
22 By: Edith Driscoll
23 Edith Driscoll, Santa Cruz County
24 Treasurer-Tax Collector
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